

ST 06-2

Tax Type: Sales Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

ABC CENTER, INC.

Applicant

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

No. 05 ST -0000

Exemption Number

Mimi Brin

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Carmen Speranza, of Speranza & Bates, on behalf of ABC Center, Inc.; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue

Synopsis:

This matter comes on for hearing pursuant to the protest and request for hearing filed by ABC Center, Inc. (hereinafter “ABC” or the “Applicant”) following the second denial by the Illinois Department of Revenue (hereinafter the “Department”) of applicant’s second request for a tax exemption number. ABC requested the exemption pursuant to its claim that it was organized and operated exclusively for educational purposes. During the administrative proceedings, applicant advised that it subsequently applied for an exemption number on the basis that it was organized and operated exclusively for religious purposes. The parties advised that the Department did not act on that exemption request because of these proceedings. At the pretrial, the parties

identified the issue for these proceedings as applicant's request for an exemption number based only upon on its status as a religious organization operating for religious purposes.

Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of ABC, and in support thereof, I make the following findings of fact and conclusions of law:

Findings of Fact:

1. ABC applied to the Department for a tax exemption number on the grounds that it was organized and operated exclusively for educational purposes. The Department denied ABC's second such request on November 26, 2003. Department Ex. No. 1
2. Subsequent to this denial, in August 2005, the applicant submitted another request for a tax exemption number on the grounds that it was organized and operated exclusively for religious purposes. Tr. p. 13. The Department took no action on that request because these proceedings were pending. Id. at 13-14
3. The only issue to be determined herein is whether applicant is organized and operates exclusively for religious purposes. Id. at 14-15; Pre-trial Order, November 22, 2005
4. Applicant is an Illinois corporation pursuant to the General Not For Profit Corporation Act of 1986. Applicant Ex. No. 2 (Articles of Incorporation, June 6, 1995)
5. ABC is recognized by the Internal Revenue Service as exempt from federal taxation pursuant to section 501 (c)(3) of the Internal Revenue

Code. Applicant Ex. No. 1 (Internal Revenue Service letter, March 21, 2001)

6. The Prelature of the Holy Cross and Opus Dei is a personal prelature¹ of the Catholic Church (hereinafter “Opus Dei”). Applicant Ex. No. 8 (An Introduction to the Prelature of the Holy Cross and Opus Dei). Its purpose is to “carry out specific pastoral missions in the [Catholic] Church.” Id. Opus Dei’s “mission is to spread the message that all Christians are called by God to make Christ known and to seek holiness in and through their daily work, family life and social relations” (id.) and it does so by offering “specialized pastoral care through classes, talks, spiritual direction, retreats, etc.” Id.
7. Applicant is recognized as a part of Opus Dei. Applicant Ex. No. 5 (The Official Catholic Directory for the Year of Our Lord 2004), 6 (Archdiocese Of Chicago, 2005 Directory); Tr. p. 16 (testimony of John Doe (hereinafter “Doe”))
8. ABC facility is located at Anywhere, Chicago. Tr. p. 17 (Doe)
9. Applicant’s staff consists of twelve (12) people: eight priests from the Archdiocese of Chicago and eight lay individuals. Tr. pp. 22-23 (Doe). Each of these people is a member of Opus Dei. Tr. p. 29 (Doe)

¹ Prelature is defined as 1) “prelacy” and 2) “a body of prelates.” Merriam-Webster Online Dictionary, www.m-w.com/dictionary/prelature. Prelacy is defined as “the office or dignity of a prelate (id. at dictionary/prelate+) and prelate is defined as “an ecclesiastic (as a bishop or abbot) of superior rank.” www.m-w.com/cgi-bin/dictionary An ecclesiastic is “a person ordained for service in a Christian Church... .” Rogets II-The New Thesaurus, 3rd ed. 1995.

10. Applicant provides activities mainly for boys and men (Tr. pp. 46-47 (Doe)) for the main purpose of their “spiritual enhancement”. Tr. p. 20 (Doe). Parents are advised of the spiritual² context of the activities. Id.
11. The activities of applicant include those that take place at the facility as well as off-premises at campgrounds and retreats. Tr. pp. 22, 24-25, 28-29, 35, 36-37. Specifically, it originated and sponsors a club that offers a camp experience for boys in grades 5 through 8. Applicant Ex. 7 (camp brochure). The purpose of the camp is, *inter alia*, to help the boys improve their character and spiritual lives with Mass and rosary said daily. Id. The spiritual aspect of the camp are advertised as “entrusted to Opus Dei, a prelature of the Catholic Church.” Id.; Tr. pp. 21-27
12. Activities for adult men include retreats whereat participants reflect on their relationships, including that with God, in light of the premises of the Catholic faith. Applicant Ex. No. 9, 10, 11 (retreat brochures). The spiritual activities at these retreats are entrusted to Opus Dei. Id.
13. Applicant also hosts Evenings of Recollection that are organized by members of Opus Dei, like ABC, that operate as mini-retreats. Tr. pp. 36-37; Applicant Ex. No. 13 (Evenings of Recollection for Men organized by members of Opus Dei in Chicago and North and Northwest Suburbs). The purpose of this activity is to involve the participant in prayer and spiritual contemplation. Id.

² Witness Doe defined “spiritual” as religious, faith-based. Tr. p. 49. A dictionary definition of “spiritual” is “ecclesiastical rather than lay or temporal; concerned with religious values”. www.m-w.com/dictionary/spiritual

Conclusions of Law:

In Illinois, the Use Tax Act (35 **ILCS** 105/1 *et seq.*) (hereinafter the “UTA”) imposes a tax “upon the privilege of using in this State tangible personal property purchased at retail from a retailer... .” 35 **ILCS** 105/3. This tax must be collected from the purchaser by a retailer and is commonly known as the “sales tax.” *Id.* at 105/3-45.

There are exemptions to the imposition of the use tax and, specifically, the UTA provides in relevant part, that an exemption applies to “[P]ersonal property purchased by a governmental body, by a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes... .” *Id.* at 105/3-5 (4). These statutory provisions are incorporated into the Retailers’ Occupation Tax Act (35 **ILCS** 120/1 *et seq.*) (hereinafter the “ROTA”) *via* UTA § 105/12. 35 **ILCS** 105/12.

The ROTA, likewise, provides exemptions for the imposition of the sales tax. In relevant part, there is an exemption for “[P]ersonal property sold to a governmental body, to a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes... .” 35 **ILCS** 120/2-5 (11). An entity that qualifies under this statutory provision “shall make application to the Department for an exemption identification number.” *Id.* at 120/1g. It is under these provisions that ABC seeks an exemption number from the Department as a corporation organized and operated exclusively for religious purposes.

It is well settled in Illinois that tax exemption provisions are strictly construed against the taxpayer and in favor of the taxing body (Telco Leasing, Inc. v. Allphin, 63 Ill. 2d 305 (1976)) with the exemption claimant having the burden to clearly and

convincingly prove entitlement to the exemption. United Air Lines, Inc. v. Johnson, 84 Ill. 2d 446 (1981). All doubts are to be resolved in favor of taxation. Follet's Illinois Book & Supply Store, Inc. v. Isaacs, 27 Ill. 2d 600 (1963).

Early Illinois case law defined “religion” by stating, “[W]hile religion, in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of God as members of societies and associations.” People ex rel. McCullough v. Deutsche Evangelisch Lutherische Jehovah Gemeinde Ungeaenderter Augsburgischer Confession, 249 Ill. 132 (1911). From the evidence of record, I conclude that ABC is organized exclusively for a religious purpose. It is recognized by the Archdiocese of Chicago and by the Catholic Church as a Personal Prelature of the Holy Cross and Opus Dei. Opus Dei, in turn, is an official part of the Catholic Church that is recognized as having a mission of spreading “the message that all Christians are called by God to make Christ known and to seek holiness in and through their daily work, family life and social relations.” Applicant Ex. No. 8. To this end, “Opus Dei offers specialized pastoral care through classes, talks, spiritual direction, retreats, etc.” Id.

The four Archdiocese priests and eight lay persons that are the staff of ABC are all members of Opus Dei. Applicant holds itself out as part of Opus Dei in its literature. Applicant Ex. No. 7, 8, 9, 10, 11. Its literature makes it very clear that its activities are centered on the incorporation of Catholic tenets into one’s personal and professional life. Id. Formal Catholic worship is definitely an aspect of its activities. Id.

While applicant provides activities that are social in nature, it cannot be denied that the spiritual mission of Opus Dei is an overlay to all of them. ABC accomplishes that mission by offering religious services and counseling through the specific Catholic services performed and the guidance toward Catholic tenets espoused by priests and lay persons during all activities. ABC seeks to interest primarily school-aged boys and adult men in finding their own “holiness” (Tr. pp. 27-28, 49) and to do so by committing themselves to living better lives through Catholic religious observation and moral tenets. As Doe testified, social activities are the reason that young people, in particular, will come to the applicant, thereby giving the applicant the opportunity to introduce them to and educate them to the mission of Opus Dei. Tr. pp. 49-50. The evidence provided leads to a determination that the religious mission of Opus Dei pervades all of applicant’s activities. For these reasons, I conclude that ABC operates exclusively for religious purposes. See Calvary Baptist Church of Tilton v. Department of Revenue, 349 Ill. App. 3d 325 (4th Dist. 2004)

WHEREFORE, for the reasons stated above, I recommend that the ABC Center, Inc. be granted an exemption number pursuant to 35 **ILCS** 120/1g as an entity organized and operated for exclusively religious purposes.

January 24, 2006

Mimi Brin
Administrative Law Judge